THE HONOURABLE SRI JUSTICE

A.GOPAL REDDY

-

W.P.No.20443 of 1994

-

Dt. 17-02-2006

-

Between:

1.Devarapalli Naga Veera Venkata Rama Mohan Rao
S/o late Madhusudhana Rao and others.

..Petitioners.

and

1.Revenue Divisional Officer & Land Acquisition Officer,
Kakinada and others.

..Respondents.

-

-

-

-

-

-

-

-

-

-

-

-

THE HONOURABLE SRI JUSTICE

A.GOPAL REDDY

W.P.No.20443 of 1994

ORAL ORDER:

In this case petitioners obtained a Rule from this Court asking the respondents to show cause why a writ in the nature of Certiorari should not be issued under Article 226 of the Constitution for calling up and quash the endorsement in D.Dis.No.3202/92 dated 19-01-1993 of the R.D.O.—1st respondent.

It is not in dispute that the petitioner's lands were acquired under a notification issued under Section 4(1) of the Land Acquisition Act (for short "the Act') in respect of an extent of Ac.53.25 cts. for which a common order was passed in Award No.26/77 dated 08-10-1977 fixing the compensation at Rs.600/- per acre. Not satisfied with the compensation awarded, petitioners filed an application under Section 18 of the Act to refer the matter to the civil court for enhancement of compensation. Accordingly the same was referred to the civil court and numbered as O.P.No.239 of 19978. Similar applications were filed, which were numbered as O.P.Nos.157 to 162, 198, 202, 239 and 292 of 1978. All the O.Ps. were clubbed together and common award was passed on 05-08-1982 by the Principal Subordinate Judge, Kakinada. Aggrieved by the same some of the claimants in O.P.Nos.157, 160, 161 and 162 of 1978 approached this court in A.S.No.909 of 1983 and batch and the petitioners/claimants in O.P.No.239 of 1978 have not carried the matter in appeal. This Court by common judgment dated 25-09-1987 allowed the said appeals and fixed the compensation at Rs.5,000/- for category I lands; Rs.2,500/- for category II lands and Rs.1,500/- for category III lands. While fixing the compensation an observation has been made in view of amendment made to the Land Acquisition Act by Act 68/1984 inserting Section 28-A, the non-applicants under Section 18 or the non-appellants after the decision under Section 18 are not disabled to take the aid of enhancement of the compensation awarded by this Court on appeal under Section 54 and such of those claimants who did not make any application or appeal can make an application within three months from the date of the judgment and on such application being made it shall be the duty of the Collector to re-determine the compensation in accordance with Section 28-A of the Act. On pronouncing the said judgment dated 25-09-1987 the petitioners herein made an application to the 1st respondent (RDO) on 16-06-1988 which clearly discloses that they applied for certified copy of the judgment on 23-04-1988 and after receipt of the judgment they filed the said application. After some correspondence

between the parties by the impugned order dated 19-01-1993 the 1st respondent informed the petitioners that they cannot file application under Section 28-A of the Act for enhancement of compensation. Questioning the correctness of the same present writ petition is filed.

Opposing the writ petition the Revenue Divisional Officer—1st respondent filed counter stating that against the judgment of the learned single judge appeal was preferred to the Division Bench. Though the Division Bench confirmed the categorization of the land, but held insofar as enhancement of solatium and interest and the additional amount provided as per sub-Section (1-A) of Section 23 of the Act, they shall pass orders after the Supreme Court clarifies the issue relating to the admissibility of the benefits on pending matters. In view of the same, petitioners are not entitled to benefit under Section 28-A of the Act.

Learned counsel for the petitioners strenuously contends that once this Court observed that non-applicant under Section 18 can also make an application under section 28-A of the Act, there is no other go for the LAO except to re-determine the compensation, and rejecting the claim of the petitioners by the impugned order cannot be sustainable and is liable to be set aside.

The Supreme Court in ***UNION OF INDIA V. HANSOLI DEVI*** answering the reference referred to the larger bench observed as under:

> "…In fact in Pradeep Kumari case ((1995) 2 SCC 736) the three learned judges, while enumerating the conditions to be satisfied, whereafter an application under Section 28-A can be moved, had categorically stated (SCC p.743 para-10) "the person moving the application expression "did not make an application", as observed by this Court, would mean, did not make an effective application which had been entertained by making the reference and the reference was answered.'

While observing the same the Supreme Court further held that when an application of a land owner under Section 18 is dismissed on the ground of delay, then the said land owner is entitled to make an application under Section 28-A and accordingly

held if the reference is answered the benefits under Section 28-A is not available.

This Court in ***AKULA NARAYANA SWAMY v. STATE OF A.P.*** after elaborately considering the conditions specified by the three learned judges in ***UNION OF INDIA v. PRADEEP KUMARI*** which a claimant is entitled to re-determine held as under:

> "The claimants who satisfy the requirements of Section 28-A of the Act alone are entitled to seek re-determination of the compensation, namely award has been made by the court under Part-III after coming into force of Section 28-A; and the awarded amount is in excess of the amount awarded by the Collector under Section 11; the person moving the application under Section 28-A is interested in other land covered by the same notification under Section 4(1), to which the said award relates; the person moving the application did not make an application to the Collector under Section 18, the application is to be moved within three months from the date of the award on the basis of which re-determination amount of compensation is sought and only one application can be moved under Section 28-A for re-determination of compensation by an applicant."

In view of the same, the order passed by the R.D.O. making an endorsement that the petitioners are not entitled to re-determination of the compensation under Section 28-A do not suffer from any manifest illegality or legal infirmities warranting interference.

Writ Petition is accordingly dismissed. No costs.

A.GOPAL REDDY,J

17-02-2006

Murthy